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Counsel for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:	)	
	)	
EASY STREET HOLDING, LLC, <i>et. al.</i>	)	Bankruptcy Case No. 09-29905
	)	Jointly Administered with Cases
Debtors	)	09-29907 and 09-29908
	)	
Address: 201 Heber Avenue	)	Chapter 11
Park City, UT 84060	)	
	)	Honorable R. Kimball Mosier
Tax ID Numbers:	)	
35-2183713 (Easy Street Holding, LLC),	)	
20-4502979 (Easy Street Partners, LLC), and	)	
84-1685764 (Easy Street Mezzanine, LLC)	)	<b>[FILED ELECTRONICALLY]</b>
	)	

**EASY STREET PARTNERS, LLC'S OBJECTION TO THE PROOF OF CLAIM  
FILED BY GUNTHERS INC. DBA GUNTHERS COMFORT AIR**

Easy Street Partners, LLC ("Partners"), a debtor and debtor in possession in the above captioned cases, objects (the "Objection") under section 502(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the

“Bankruptcy Rules”), and Local Rule 3007-1 to proof of claim no. 33 filed by Gunthers Inc. dba Gunthers Comfort Air (“Gunthers”). In support of this Objection, Partners respectfully represents as follows:

**Background**

1. On September 14, 2009 (the “Petition Date”), Partners, Easy Street Mezzanine, LLC and Easy Street Holding, LLC (collectively, the “Debtors”) each filed a voluntary petition in this Court under chapter 11 of title 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their property as debtors-in-possession.

2. The Debtors’ business is the owning the The Sky lodge Hotel (the “Sky Lodge”). The Sky Lodge is a luxury boutique hotel located in the middle of historic Main Street in Old Town Park City. The Sky Lodge is being sold as fractional ownership with a total of 176 one-eighth shares offered.

3. On October 2, 2009, the Office of the United States Trustee appointed an official committee of unsecured creditors to serve in these cases pursuant to Bankruptcy Code sections 1102 and 1103.

4. The deadline to file proofs of claim by all claimants (other than governmental units) was January 6, 2010 at 4:00 p.m. (the “Bar Date”).

5. This Court has jurisdiction to consider this matter under 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U. S. C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory predicates for the relief requested are sections 502 of the Bankruptcy Code and Bankruptcy Rule 3007.

**The Gunthers Claim is Subsumed in the Jacobsen Claim**

7. Jacobsen National Group, Inc. (“Jacobsen”) was employed by Partners as the general contractor by contract dated March 20, 2006 (the “Construction Contract”) to construct the Sky Lodge and related site improvements and outbuildings. Construction commenced on or about May 28, 2006 and was generally completed on approximately December 18, 2008. Jacobsen asserts that it and its subcontractors have completed their work under the Construction Contract and are owed \$1,382,127.18 (exclusive of interest and costs).

8. Because it was not paid in full for its work under the Construction Contract, on or about March 17, 2009, Jacobsen recorded with the Summit County Recorder a notice of mechanic’s lien against the Sky Lodge and related property. On or about September 4, 2009, Jacobsen commenced a civil action in the Third Judicial District Court for Summit County, State of Utah, to enforce its mechanic’s lien. Named as defendants were Partners, Equity Title Insurance Agency, Inc., which acted as escrow agent on many or most of the sales of units, and owners of the units (the “Third Party Units”). This action is stayed pursuant to section 362(a) of the Bankruptcy Code as to Partners.

9. Under Article 5.2 of the Amended Plan of Reorganization of Easy Street Partners, LLC dated April 18, 2010 (the “Plan”), Jacobsen shall (i) be paid a discounted cash payment on the Plan’s effective date equal to \$1,330,000, and (ii) utilize the \$1,330,000 it receives to pay its subcontractors, including Gunthers, in full and complete satisfaction, settlement and release of all claims that Jacobsen and each of its subcontractors (including Gunthers) has against Partners and the owners of the Third Party Units.

Moreover, Jacobsen has indicated to Partners that Gunthers will be paid from the \$1,330,000 that it receives under the Plan.

**General Overview of the Gunthers Claims**

10. Gunthers filed proof of claim no. 33 in the amount of \$264,587.52 (the “Gunthers Claim”). The proof of claim asserts that Gunthers furnished labor, services, equipment, and materials to Jacobsen in connection with the construction of the Sky Lodge.

**Relief Requested**

11. By this Objection, Partners (i) objects to the Gunthers Claim on the ground that the Gunthers Claim is being satisfied from the payment to Jacobsen under the Plan, and thus the allowance of that claim would be duplicative of the claim filed by Jacobsen, and (ii) seeks the entry of an order disallowing the Gunthers Claim.

**Basis For Relief**

12. In the ordinary course of business, Partners maintains books and records (“Books and Records”) that reflect, among other things, Partners’ liabilities and the amounts owed to their creditors. Partners and its advisors are conducting a review of the proofs of claim filed and are comparing them with Partners’ Books and Records to determine the validity of the claims against Partners. In the process, Partners has identified that the Gunthers Claim is duplicative of the claim filed by Jacobsen and that the payment to Jacobsen includes all claims of Jacobsen’s subcontractors, including Gunthers.

13. Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.” 11 U.S.C. § 502(b)(1).

14. Partners has compared its Books and Records with the Gunthers Claim and has determined that Partners' Books and Records reflect that (i) no amount is due to Gunthers separate and apart from the total amount due to Jacobsen, and (ii) the Gunthers Claim is included in the claim filed by Jacobsen against Partners. Moreover, under section 5.2 of the Plan, Jacobsen shall utilize the funds it receives to pay the Gunthers Claim as well as the claims of its other subcontractors.

15. To avoid the possibility of multiple recoveries by Gunthers, Partners requests that the Court disallow and expunge the Gunthers Claim because its claim will be satisfied from the \$1,330,000 payment to Jacobsen under the Plan.

**Reservation of Rights**

16. Partners expressly reserves the right to amend, modify, or supplement the objections asserted herein and to file additional objections to the proof of claim filed by Gunthers. Should one or more of the grounds of objections stated in this Objection be dismissed, Partners reserves the right to (i) object on any other grounds and (ii) seek further reduction of the Gunthers Claim to the extent such claim has been paid or otherwise satisfied.

WHEREFORE Partners respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

DATED this 1st day of March, 2010

DURHAM JONES & PINEGAR, P.C.

By: /s/ Kenneth L. Cannon II

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the Easy Street Partners, LLC's  
Objection to Proof of Claim filed by Gunthers Inc. dba Gunthers Comfort Air was served on this  
1<sup>st</sup> day of March, 2010, via ECF Notification and/or first-class mail on the following parties and  
the parties listed on the attached page.

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81 South 700 East  
American Fork, UT 84003-2158

Gunthers Comfort Air  
c/o Jeffrey L. Shields  
Callister Nebeker & McCullough  
10 East South Temple, Suite 900  
Salt Lake City, UT 84133-1101

/s/ Kristin Hughes

**ECF Notification**

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